IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

MFA.No. 311 of 2000()

OPMV.36/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA

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APPELLANT/PETITIONER:

GEORGE KURIAN,
S/O. KURIAN, IRUMBOOTTIL, ETTUMANOOR.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS/RESPONDENTS:

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1. HARI NARAYANAN N. KAMAL,
KOTTARAPPATTU, NORTH PARUR.

2. UNTIED INDIA INSURANCE CO. LTD.,
THODUPUZHA.

*3. GEORGE, S/O. KORAH,
KURUTHUPARAMPIL, MRALA KARA,
KARIMKUNNAM.

(*DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER AS PER ORDER DATED 04/04/2006 IN I.A.No. 652 OF 2006)

R1 BY ADV. SRI.G.PADMAKUMAR
R2 BY ADV. SRI.P.JAYASANKAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/01/2007 ALONG WITH M.F.A NO. 317 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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M.F.A. Nos. 311 & 317 OF 2000

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Dated this the 19th January , 2007

J U D G M E N T

These appeals arise out of O.P.(MV) Nos. 36 and 37 of 1995 on the file of M.A.C.T., Pala. The claimant in O.P.(MV)37 of 1995, viz., Gopalakrishnan was riding a scooter bearing registration No. KRK 9596 from the eastern side of Pala-Athirambuzha road . The claim petitioner in O.P.(MV) 36 of 1995 , viz., George Kurian was the pillion rider on the vehicle KRK.9596. When the claim petitioners were proceeding from the east to west, they had to overtake a stationary lorry which was parked on the southern side of the road. While the scooter KRK.9596 overtook the lorry it collided with a scooter bearing registration No. KBF 7586 driven by George, the third respondent in the Motor Accidents Claims.

2. The claim petitioners, viz., Gopalakrishnan and George Kurian contended that the accident occurred as a result of rash and negligent driving of KBF 7586 by George. The first respondent in O.P.(MV)Nos. Viz., Hari Narayanan is the owner of scooter KBF 7586. The second

respondent in the Claim Petitions was the insurer of the vehicle KBF 7586.

3. Before the Tribunal, the claim petitioners were examined as P.Ws.1 and 2 and Exts. A1 to A17 were marked. There was no oral evidence on the side of the respondents. Exts. B1 and B2 were marked on the side of the respondents in the Claim Petitions.

4. Exts. B1 and B2 would show that the rider and pillion rider of the scooter KBF 7586 had filed claim petitions (O.P.(MV)Nos.31 of 1995 and 32 of 1995) claiming compensation in respect of the very same accident. Gopalakrishnan, the rider of the scooter KRK.9596 is the first respondent in Exts. B1 and B2 Claim Petitions . O.P.(MV) No. 31 of 1995 was filed by George, the third respondent in O.P.(MV)Nos. 36 and 37 of 1995. O.P. (MV)No. 32 of 1995 was filed by Kora, who was the pillion rider of KBF 7586. Exts. B1 and B2 would indicate that those claim petitions were settled by the claim petitioners therein with the insurer and award was passed accordingly. There is no finding as to whether Gopalakrishnan was negligent in driving KRK.9596 or whether the accident occurred due to rash and negligent driving by Gopalakrishnan. There is no decision on the

merits in O.P.(MV) Nos. 31 and 32 of 1995.

5. The Tribunal dismissed the claim petitions filed by George Kurian and Gopalakrishnan on the ground that they failed to prove that KBF 7586 was driven by George , the third respondent in the proceedings in the rash and negligent manner. The main ground on which the Tribunal held against the appellants herein, viz., the claim petitioners in O.P.(MV)Nos. 36 and 37 of 1995, is that Exts. B1 and B2 awards were passed in favour of the third respondent George and the pillion rider of KBF 7586 and that in those proceedings, Gopalakrishnan, the petitioner in O.P.(MV)No. 37 of 1995 was a party. Another ground on which the Tribunal held against the claim petitioners is that a criminal case was registered against Gopalakrishnan and not against the third respondent George. It is proved by Ext. A17 judgment that Gopalakrishnan was acquitted by the criminal court.

6. The Tribunal did not properly advert to the oral evidence in the case; and absence of any evidence on the part of the respondents was not taken note of as a material point. Ext.A7 Scene mahazar was produced by the petitioners to show that the lie of the scooter KBF 7586 as noted in

the mahazar would indicate that KBF 7586 was being driven on its wrong side. The Tribunal held that Ext.A7 is irrelevant. Since there was no finding on the merits in Exts. B1 and B2 claim petitions, the Tribunal was not justified in holding that in view of Exts. B1 and B2 claim petitions, the present claim petitioners could not maintain a claim for compensation . This finding is erroneous, which goes to the root of the matter. So also, the finding of the Tribunal that Ext.A7 is irrelevant, is also wrong. Ext. A7 is a piece of evidence which can be taken note of along with other evidence to arrive at a conclusion as to whether the rider of KBF 7586 was proceeding on the correct side of the road or whether the accident occurred due to riding of KBF 7586 on the wrong side. The Tribunal should have discussed the oral evidence available in the case. What is the effect of not adducing any oral evidence by respondents Nos. 1 and 3 before the Tribunal was also not taken note of by the Tribunal. In these facts and circumstances, I am of the view that the award passed by the Tribunal is liable to be set aside and it is only just and proper to remit the case to the Tribunal for fresh disposal, and to afford an opportunity to both parties to adduce such other evidence as they wish to adduce.

In the result, these appeals are allowed . The common award in O.P.(MV)Nos. 36 and 37 of 1995 is set aside and the cases are remanded to the Tribunal for fresh disposal in accordance with law and in the manner indicated above. No order as to costs. The Tribunal shall dispose of the cases as expeditiously as possible taking note of the fact that the claim petitions are of the year 1995 and that those petitions were originally filed in the year 1989 before the M.A.C.T., Kottayam which were later transferred to M.A.C.T., Pala. The parties shall appear before the Tribunal on 19.02.2007.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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M.F.A. Nos. 311 & 317 OF 2000

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Dated this the 19th January, 2007

J U D G M E N T